IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 177 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIMLABEN WD/O POPATLAL ISHVARLAL. & 2 - Appellant(s)
Versus
BAVA BABUGIRI MAGANGIRI, & 3 - Defendant(s)

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Appearance :

MR TEJAS P SATTA for Appellant(s) : 1 - 3
NOTICE SERVED for Respondent No. 1,
MR RITURAJ M MEENA for Respondent No. : 2,
UNSERVED-EXPIRED (R) for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/08/2007

ORAL JUDGMENT

1. Shri Tejas Satta, learned counsel for the appellants no. 1 to 3. From the records it

appears that the appellants no. 4 and 5 were transposed as respondents no. 3 and 4. The office report shows that these respondents have expired. Learned counsel for the appellants submits that the respondents no. 3 and 4 were parents of the deceased, therefore, their death would not adversely affect the claim of the widow and the children of the deceased. He submits that names of respondents no. 3 and 4 be deleted. Prayer is allowed. Let the office delete names of the respondents no. 3 and 4 from the array of the respondents.

2. The appellants, being aggrieved by the award dated 17.2.1981 passed by the Motor Accidents Claims Tribunal, Mehsana, in M.A.C.Petition No. 164 of 1980, are before this Court with a submission that the Tribunal was unjustified in holding that the deceased was also responsible in contributing 50% negligence by taking out his head out of the door opening.

3. The short facts necessary for the disposal of the present appeal are that on 9.5.80, deceased was travelling in the S.T. bus, the bus was

overcrowded, therefore, the deceased was standing on the space near the entry door of the bus. It is to be noted that out of the two window panes, one was missing and there was a gap in the door of the S.T. bus. According to the claimants, as the bus was overcrowded, the deceased started feeling giddiness and suffocation, and because of the vomitting sensation, he took his head out of the door and at that time, he hit the electric pole which the bus was trying to cross. It was submitted that as the driver of the bus was rash and negligent, the claimants were entitled to the amount as claimed in the petition.

4. The driver and the owner of the bus appeared before the Tribunal and submitted that as the bus was to go to the underground road and as there was traffic jam on the other side, the driver had to steer the bus more towards his left and under the circumstances, no negligence could be found on the part of the driver.

5. The learned Tribunal, after recording the evidence and hearing the parties held that the

deceased contributed to the negligence to the extent of 50% and after slashing the award amount by 50%, it awarded a sum of Rs. 26,800/- in favour of the claimants.

6. To make the records straight, it must be recorded that the Gujarat State Road Transport Corporation [GSRTC], being aggrieved by the award of the Tribunal had filed First Appeal No. 1231/81, the same came to be dismissed by the learned Single Judge on 25.7.06, wherein, the learned Single Judge has held that the appeal did not merit.

7. Shri Satta, learned counsel for the appellants submitted that at number of the places, the learned Tribunal has observed that the driver was rash and negligent in steering the bus very close to the electric pole. According to him, the driver must take care and apply proper caution after keeping in view the habits and the manner of the passengers which include taking out the hand from the window or taking out their head from the openings. Placing reliance upon certain judgments, which I will consider at the

material time, he submitted that no negligence could be held on the part of the deceased.

8. Shri R.M. Meena, learned counsel for the GSRTC, on the other hand, submitted that the Tribunal did not commit any wrong in holding 50% negligence on the part of the deceased.

9. From the records, it would appear that the learned Tribunal in para-9 of the award has held that the driver steered the bus more towards southern side of the road as the vehicles were halted at the other end of the underground road. The Tribunal also found that despite width of the road, the driver took the bus very close to the electric pole and that too, at a distance of about 1 feet or six inches. The Tribunal also held that on the other side of the road, vehicles were parked. It was the duty of the driver of the S.T. bus to drive more carefully and that too inch by inch to avoid any mishap. Despite holding this, the Tribunal held that the deceased contributed to the negligence. Placing reliance upon the Division Bench judgment of this Court in the matter of Chaturji Amarji and

others v. Ahmad Rahimbux and others [1980 A.C.J. 368] and yet another judgment in the matter of Sushma Mitra v. M.P. State Road Transport Corporation [1974 ACJ 87], learned counsel for the appellants submitted that in case like present, no contributory negligence could be held on the part of the deceased.

10. The Division Bench of this Court has observed as under:-

> *"11. The correct criterion in such cases is first to find out as to whether it is a case in which arm or any part of the body of a passenger travelling by the bus was protruding unreasonably, and whether such an act on the part of the passenger was fraught with danger; and lastly, whether a conclusion was inevitable that he received the injury as a result of his own lack of care and positive negligence on his part. Secondly, a question may also be asked as to whether the accident resulting in the injuries to the passengers was the result of contemporaneous negligence on the part of the passenger as well as the driver or drivers of the vehicles concerned. In this connection, it has to be borne in mind that*

primarily the drivers owe a duty of safety to such passengers which consists of driving the vehicles slowly with care and caution, while crossing each other and not to bring their respective vehicles very close to each other so that arm or any part of his body resting on the window sill or the window rail or sitting in such a way that it protrudes therefrom, does not get hurt when the vehicles cross each other."

In the matter of Sushma Mitra v. State of M.P. State Transport Corporation, the Division Bench of Madhya Pradesh High Court has held as under:-

"It cannot be disputed that the driver of a bus which carries passengers owes a duty of care for the safety of passengers while driving he must have the passengers in contemplation and he must avoid acts or omissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. It is a matter of common experience that passengers who sit adjoining a window very often rest their arm on the window sill by which act, the elbow project outside the window. The driver of the bus must have

these passengers also in contemplation and therefore, while overtaking or crossing another vehicle on the road he must not come too close to the vehicle that is overtaken or crossed and he must leave sufficient gap between the vehicles to avoid injury to these passengers. The driver of a vehicle coming from the opposite direction owes a similar duty while crossing a passenger bus. He too must have in contemplation passengers sitting near the window of the oncoming bus who may have their hands resting on the windows, and in crossing the bus he must not only avoid contact with the body of the bus but he must also avoid coming in contact with the elbow of any passenger that may be resting on the window and projecting outside the body of the bus. He must, therefore take precautions to move to his rear side and leave sufficient gap for preventing any mishap."

11. From the observations made in these two judgments, it would clearly appear that the driver of a bus, which carries a passenger owes a duty of care for the safety of passengers while driving he must have the passengers in contemplation and he must avoid acts or omissions which can reasonably be foreseen to

injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. It would be a matter of common experience that passengers who sit adjoining a window very often rest their arm on the window-sill by which act the elbow projects outside the window. According to the Division Bench, driver of the bus must have these passengers also in contemplation and therefore, while overtaking or crossing another vehicle on the road he must not come too close to the vehicle that is overtaken or crossed and he must lave sufficient gap between the vehicles to avoid injury to these passengers.

12. In the present case, the learned Tribunal, despite holding that the driver steered the bus too close to the electric pole, erred in holding that because the deceased had taken his head out he added to the negligence or invited trouble.

13. In view of the above judgments, in the opinion of this Court, it cannot be held that the deceased contributed to the negligence.

14. The Tribunal was unjustified in reducing the

claim amount to Rs.26,800/-. The appellants would be entitled to the entire amount of Rs. 53,600/-, that is, additional amount of Rs. 26,800/-. They would also be entitled to interest at the rate of 6% per annum from the date of the petition till the realization. The appeal, to the extent indicated above, is allowed. No costs. The office to record that the First Appeal No. 1231 of 1981 has already been disposed of.

[R.S. GARG, J.]

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